

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

OCTOBER 24, 2013

MEMBERS PRESENT: John Rice, Vice-Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker and Jay Leduc, Alternate

MEMBERS EXCUSED: John Ricci, Chairman;

ALSO PRESENT: Rick Taintor, Planning Director

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Vice chairman Rice welcomed Michael Barker to the Board. Mr. Barker was appointed at Monday's City Council meeting.

I. PUBLIC HEARING – OLD BUSINESS

*The Board's action in this matter has been deemed to be quasi-judicial in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

A. The application of **Catherine T. Moretti, Owner**, for property located on **Central Avenue**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into three lots with the following:

1. Proposed Lot 1 having 39,391 ± s.f. and 169.07' of continuous street frontage on Central Avenue;
2. Proposed Lot 2 having 32,427 ± s.f. and 104.14' of continuous street frontage on Central Avenue;
3. Proposed Lot 3 having 21,232 ± s.f. and 100' of continuous street frontage on Central Avenue.

Said lots are shown on Assessor Plan 220 as a portion of Lot 87 and lie within the Single Residence B (SRB) District where a minimum lot area of 15,000 s.f. and 100' of continuous street frontage is required. (On March 21, 2013 the Planning Board granted subdivision approval to subdivide Lot 87 into two separate lots.) (See RCRD Plan D-37764) (This application was postponed at the October 17, 2013 Planning Board meeting.)

The Vice Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, addressed the Board, on behalf of Catherine Moretti. They appeared in March to subdivide off the existing house lot. They are now back to subdivide the

remaining parcel into three separate lots. Each lot has an excess of 21,000 s.f. and there is adequate land area for a fourth lot but they are lacking frontage. There are no wetlands. Frontage is on Central, a small amount of Myrtle and backs up to the I-95 interstate. There is a utility easement that covers the rear of the property. They have no objections to the stipulations in the Staff Memorandum.

He displayed a plan showing the proposed lots. One lot line is on a slight angle and they are requesting a waiver for that. There is no sewer on Central Avenue so they would extend it up Myrtle and run it along Central on the western side of the road. They will be coming in with new water services from the existing water and a new sewer service with sewer manholes. They have had discussions with DPW and will continue those talks as they finalize the design of the utility as there are new sewer manholes involved and they will require a permit from DES for the extension. On one parcel they are proposing a shared driveway because there is a large outcropping and it would reduce the number of curb cuts.

Ms. Moreau asked if he had given any consideration to not only doing an easement but also a maintenance agreement for the shared driveway. If that is not recorded, disputes often come up. Mr. Weinrieb responded that would be required and essential and could be a stipulation as well.

Deputy City Manager Allen referred to the culvert under the driveway and he did not get out to see the condition of the ditch where they have the culvert laid, but wondered about the amount of cover he had on the driveway. Mr. Weinrieb indicated they will try to mound that up as best as possible. The challenge was that they don't have a lot of flexibility to lower the culvert because of the existing structures so it will have minimal cover but they will have to mound it up. Deputy City Manager Allen also asked about the end treatments to the culvert. Mr. Weinrieb stated there is very little flow but they would have an end section and rip rap. Deputy City Manager Allen requested a detail for that.

The Chair asked if anyone was present from the public wishing to speak to, for or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Allen made a motion to determine that the application was complete according to the Subdivision Rules and Regulations, and accept it for consideration. Mr. Hopley seconded the motion. The motion passes unanimously.

Deputy City Manager Allen made a motion to grant a waiver from Section VI.2.A of the Subdivision Rules and Regulations, to allow the new lot lines to not be perpendicular to the street line on Central Avenue. Ms. Moreau seconded the motion. The motion passed unanimously.

Deputy City Manager Allen made a motion to grant preliminary and final subdivision approval with the stipulations in the Department Memorandum plus a stipulation that a detail be added for the end treatment of the culvert. Ms. Moreau seconded the motion and requested a stipulation that there be a Maintenance Agreement regarding the shared driveway, which is reviewed and approved by the City's Legal Department.

Mr. Taintor added that in his Memorandum he made a recommendation that Public Works would indicate approval of the shared driveway and he hasn't had a chance to follow through on that.

Motion for Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

1. This recommendation is conditioned on approval of the shared driveway by Public Works.
2. The driveway and utility easements shall be subject to review and approval by the Legal and Planning Departments.
3. A Maintenance Agreement regarding the shared driveway shall be subject to review and approval by the Legal and Planning Departments and recorded at the Registry of Deeds.
4. A detail for the end treatment of the culvert shall be added to the plan.
5. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
6. GIS data shall be provided to the Department of Public Works in the form as required by the City.
7. The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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II. PUBLIC HEARING – NEW BUSINESS

*The Board’s action in this matter has been deemed to be legislative in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

A. A public hearing on proposed amendments to the Zoning Ordinance to implement form-based zoning in the downtown area. The proposed amendments include:

- (1) Inserting a new Article 5A – Character Districts, as set forth in the draft ordinance consisting of proposed ordinance text (dated October 4, 2013), and proposed illustrations, maps and tables; and
- (2) Making conforming amendments to other sections of the Zoning Ordinance (dated October 3, 2013), including Sections 10.410 (Establishment and Purpose of Districts), 10.420 (District Location and Boundaries), 10.640 (Downtown Overlay District), 10.1230 (Sign Districts) and 10.1520 (Definitions – Terms with Specialized Applications).

Mr. Taintor stated this was the result of work that has been going on since the beginning of this year with their consultants, Town Planning and Urban Design Collaborative. They started with a detailed study of the entire downtown study area. They then had the Design Charrette in early June which many residents and property owners participated in. They have gone through several drafts of the FBZ ordinance, which they are now calling Character Districts. The Planning Board has had two work sessions on this and the City Council voted on Monday night to officially refer it to the Planning Board for a recommendation. Present tonight for the presentation are the consultants, Brian Wright and Bill Wright, along with Nick Cracknell of the Planning Department.

Mr. Brian Wright indicated that most of the presentation would be done by Nick Cracknell and they will be available for questions after Mr. Cracknell’s presentation.

Nick Cracknell, Principal Planner of the Planning Department, indicated they have been formally working on this since January but the Department received a grant application in the spring of 2012 to start looking at this. This is as a result of growing concerns from staff and continued discussions and

comments from board and commission members. They see the projects and case loads and they see how often the regulations don't fit the new project coming forward. For those who have not been at the past two work sessions, or any of the meetings which they have had over the past two months, he did a quick overview of the project and then the nuts and bolts of the form based code. He gave a power point presentation.

Mr. Cracknell felt it was important of the public realm and how it regulates private property. The big difference with FBZ is the relationship between the building and its surroundings. During the first 4-5 months they collected data which they needed to understand why certain buildings are liked and how that maps back to the land use regulations.

The two big issues are building scale and style. Building scale deals with the height, bulk and massing. The stylistic part is not just architecture, but is also what is going on at the ground floor and how does it activate the streetscape. How parking is handled is very important. When you are in an urban environment, development is continuous. His "Threats and Opportunities Map" showed (in red) potential sites for redevelopment which they should be either concerned about or excited about. Pending development areas, 2 ½ acres, (in pink) show projects that have been started but are not completed yet. Recently developed areas in the past 15-20 totals 8 acres (in white). There is a lot of area left to think about and they are not done just because they are seeing fewer parking lots than they did a few years ago as these private lots continue to be redeveloped.

Most of the 80 acre area they are working with is mostly CBA & CBB. The current maximum height in the A zone is 50' and the rest of the B zone is 60'. Mr. Cracknell reviewed the existing zoning regulations for those districts: building height, open space, building coverage, design guidelines.

Mr. Cracknell reviewed baseline facts and trends. Building heights downtown range from 12' – 75', 92% of all building are less than 45', 31 buildings are taller than 45' and 18-20 were build prior to WWI and they happen to be some of the City's best buildings. Ironically, 50% of the buildings built in the past 15 years are 50' or taller. Buildings have become super-sized because of market conditions and allowance under zoning. Less than 5% of the 80 acres is public open space. The average building age is 1868 and 82% were built prior to WWII. 60% of the land area was developed since WWI so 2/3 of the area has been redeveloped. 75% have sloped roofs, mostly older buildings. 25% of the buildings are focal buildings, 50% are contributing, 10% are non-contributing and 15% have not yet been rated as they are not 50 years old.

Mr. Cracknell stated that height, volume, and floor area ratios are the easier part and design is what is important. It is even more important to have guidance on how one goes about working within the heart of Portsmouth when it has authenticity and critical mass of historic properties.

Using the FBZ as a response this these concerns, being context based and sensitive to the block and the street and how they interface with each other, using a transect based approach to define those neighborhoods and break them down, developing building form standards that focus more on form than function and not use, and seeing if they can begin to frame some design standards and guidelines that will assist the process (HDC).

Mr. Cracknell stated the target area is 80 acres, 400 properties, 370 buildings, 32 streets, 50 blocks, 5 miles of right-of-way, 60% redeveloped since WWI, wide variety of street widths, a variety of architectural styles and heights. There are enough similarities that they can structure a code to reflect the kinds of places they would like to see and hopefully discourage the type of places they don't.

Data was collected on all 370 buildings. They conducted a 5 Day Design Charrette with hands on work shops and roundtable meetings. They ended up with a high level draft Form Based Zoning. What people said: There was a lot of preference to traditional design and land use patterns that Portsmouth already has. They like the quality and character of existing buildings, the charm and human scale.

People talked about successful older buildings: The Rockingham, the old Post Office, the Rusty Hammer building. Successful newer building: Jardinaire building, 18 Congress, Piscataqua drive-thru/parking lot. Less Successful buildings build subsequent to the war: 55 Congress Street, High/Hanover parking garage, Coldwater Banker Building, the new post office. Less successful new buildings: the Hilton Garden, the First National Bank, 51 Islington Street, the High Street Condos.

Mr. Cracknell reviewed the main elements of the FBZ code. In this project, they fit in the T4 and T5 which is the general urban and the urban center zones. What is different in these two zones is the density of the development and the land use patterns. The Regulating Plan essentially replaces the zoning map for the 80 acres. There are three main character districts and two special districts.

CD5, the Urban Center, (purple) is the middle of Portsmouth and is the highest density district. The next district is CD4 which surrounds CD5 and is the general urban. CD4-L with areas that are more residential than mixed use (The Hill, Haymarket Square and Strawberry Banke). The map was color coded to show the various districts. Green was Municipal and exempt from zoning. The Civil District is for non-profit buildings and if they ever transitioned to private properties they would have to decide what district would be the appropriate character district to place them in. The dotted line is the DOD which was carried forward on the plan.

To address building height, they looked at all of the buildings and parcels and they assigned a range of building heights for the properties that are in the district. The spirit of the map is to take the places in the neighborhoods that are good and liked and have the building heights be commensurate with that. The tallest buildings (4-5 stories) would be allowed on Congress Street where the right-of-way is wide.

The next special requirements map regulates shop fronts and office fronts. This is highly focused in the DOD. The only office front area they wanted to capture was the Oakpoint Engineers building. They also have step frontage that requires that they have a step because that is what exists in that area.

The last item of interest on the map is the waterfront industrial district along the waterfront on Ceres Street. They are suggesting that any buildings built along the waterfront only utilize 50% of their land for the building and leave 50% of the frontage open. This would free up water views. Also, there is a requirement that the buildings have wood exteriors rather than brick, which is what they were historically.

Mr. Cracknell referred to the building form tables for the different character districts. He stated it was very easy to read. There is a summary table for all three districts which he reviewed quickly, pointing out how they differ from each other: Building heights, roof types, setbacks, building coverage, façade glazing. There are three basic yard types. The graphics were reviewed and explained.

Lot layers are new with FBZ. This introduced the concept of first, second the third layers into the lot. The first is from the façade to the property line, the second adds 20' to that line, and it is largely the

framework for where one parks and where accessory buildings can be located and the goal is to move those out of the first and second layers.

There are seven basic building types allowed in the districts. Private frontage types range from the common yard, porches, step, stoop and office, and are keyed into the character districts.

Mr. Cracknell went through a sample application and how it would work through the FBZ code.

The Architectural Design Standards and Guidelines consist of eight sections and waivers would be allowed by the HDC because, clearly, this is not “one size fits all”. There will be instances where the standards will not be appropriate for the design being proposed.

Vice Chairman Rice asked for questions from the Board.

Mr. Leduc asked about the civic and government buildings that aren't regulated and whether it would behoove them to have the height requirements for those buildings in case the properties were sold. Mr. Cracknell explained that the reason they don't have them on the plan for heights is they are not in one of the character districts. If a civic building was to be sold and become private property, they would first have to have the Regulating Plan amended to have it placed in one of the three character districts. The owner would have to request that with a hearing before the Planning Board and they would recommend to the City Council. It is an added level of protection to the City that these properties will not be razed and become something else. They have the ability to change the use of the building but not remove the building without changing the Regulating Plan. The probability of them becoming something else or being removed is very low and the citizens would be loath to see them become something else.

Councilor Novelline Clayburgh asked, when it says 2-3 stories, there is not a building height limit. Mr. Cracknell assured her that the 45' still stands and that ordinance has been passed. For the FBZ, they have set for each district they have set a minimum and max for the ground floor and only a minimum for the upper floors. However, the concern was brought up at the City Council meeting as there is always concern about what people may do so they are not averse to putting a maximum for the upper floor of 10' and that would resemble market conditions for the foreseeable future. That would provide assurance that people could only build to a certain height.

Mr. Brian Wright added that if they put a maximum in the code, they will lose the variability of the roof lines. Mr. Cracknell felt they get that anyways. Developers want to get as much as they can get and that probably won't change no matter what they do. It is inherent on the approval process to have more detailed regulations. It is the people who sit on the land use boards that will create the dynamic streetscape.

Councilor Novelline Clayburgh asked why they couldn't require that a building would not exceed a certain number of feet. Mr. Cracknell indicated they could but explained they were trying to move towards stories to get variability. The problem with 60' is that there is only a small area where that would be allowed. He felt it was easier for people to use and understand if they kept a maximum floor height and keep it at stories.

Mr. Bill Wright indicated that most people experience a building with the number of stories rather than by how many feet tall it is. They don't comprehend how many feet tall something is which is why they go with stories.

Vice Chairman Rice opened the Public Hearing and called for speakers:

Duncan McCallum, of 536 State Street. He does not feel FBZ has been properly vetted. He is not saying he is against it. When it was introduced in the spring, everyone was very excited and various groups endorsed it but the problem was that no one understood what FBZ meant. The Charrette was only one weekend this summer but he was happy to see the City reach out to the public. His specific problems are: There has been insufficient time and effort to investigate FBZ; he thinks an effort should be made to investigate other cities who have adopted FBZ; he was uneasy with the holistic system of zoning which is based on character rather than specific criteria; he feels they are rushing and going too fast; and there should be a firm height limit of 45' written into the code. He felt this should be introduced on a trial basis, possibly for a year.

Joe Caldarola, of 170 Dennett Street. Mr. Caldarola stated he is a City Council candidate. He was concerned about rushing the FBZ through. Most of the building pressure is in the north end and on Islington Street which is not included in this plan. He thinks design standards are great and that the HDC needs guidance from the City Council. He did not feel it was clear on how much of this accountability transfers to staff. The devil is in the details and he wonders about the unintended consequences. He felt that some of the charm of Portsmouth was the variation and was concerned they would they lose that by having everybody building the same way. The Specialty Requirements Building Height map needs to be reviewed very carefully. He would suggest passing this as a suggested guideline with the existing ordinance and give the City a chance to deal with the unintended consequences.

Clare Kittredge, 27 Franklin Street. She feels there is a climate of anxiety among a certain group of people in Portsmouth who are concerned about what is happening to the City. The City is getting ready to elect a new City Council and they seem to be rushing to finalize this before the year end.

Jerry Zelin, of 70 Kensington Road. He has read the FBZ ordinance and watched the previous work session on TV and he commends the Planning Board and Planning Department for their hard work. He feels this allows quite a bit of subjectivity by City employees, and it seems to him it is quite objective. He believes it is a good reason to adopt something like this now as there is the possibility of surprise with infill development downtown. This proposal seems more fine-tuned than our current ZO. He likes the 50% open space along the waterfront. His constructive criticism: He agrees they need an absolute height limit expressed in feet; he would like to have a dimensional limit for the building footprint as there are some large lots that could be developed with big block buildings; he would like to see placeholders for municipal and civil lots into an existing district so that, if sold, it won't become a political free-for-all regarding what district they are placed in; he's still unclear on whether this concept abandons the fundamental pillar of zoning to regulate use or whether this will preserve the tables in the existing ZO; Page 2 of text of the proposed FBZ ordinance, it is gobbly-gook, it will be fodder for developers to litigate, and it should be much clearer.

Keith Eveland, property owner in the historic district. He felt a tremendous amount of work has gone into this for the past 1 ½ years. He feels they should move ahead as nothing says it cannot be modified. He also commented on Steve McHenry using a 3-D model recently at an HDC meeting for a project on Islington Street that he is proposing and he wanted to know if this would be required of all developers as it is fairly inexpensive to do.

Mr. Taintor responded to Mr. Eveland's comment and stated that was not included in the FBZ proposal but it is included in a separate proposal before the City Council regarding projects being required to produce 3-D models. It is scheduled for first reading before the City Council on November 18th. He also wanted to clarify a comment of Mr. Zelin's by saying that the FBZ code would not supersede HDC review. Therefore, if the City Council were to adopt the 3-D model requirement, that would part of the process and would fit into the FBZ code.

Robert Shouse, of 555 Dennett Street. Mr. Shouse stated that he supports the new Character Based Zoning. Mr. Cracknell is an asset to the City with unbelievable knowledge of the City. The preservation of our historic buildings and nature should be a priority. Unfortunately, some recent buildings have been developed out of sync with their neighborhoods. This zoning would take the guess work out of what is appropriate. The plan is proven and coherent, clear and concise. The general consensus seems to be the height limit so let's include it in the code. The City's Planning Department and Planning Board have been working hard on this and now is the time to put this into use. He supports Character Based Zoning. This will be an active means to make sure Portsmouth continues to be Portsmouth.

Lawrence Cataldo, 133 Islington Street. He feels we should support this measure. The study was quite detailed and an extremely important tool to the land use boards. He has been impressed with the historical architecture and space in Portsmouth and FBZ allows them to be in a location that is their place and make changes in the future. With 30,000 cells you can do a lot of very detailed planning. FBZ is not new - Rome, with the Greek architecture, and the City of Vienna, all have architecture that makes them look and feel like they are intricate. The existing zoning has done its job but things have gone through that citizens are not very happy about. He likes the idea of height variability but he would like a 45' height limit.

Joe Calderola, 2nd time speaker. He stated that he misspoke if he implied that he doesn't support FBZ because he does but believes it needs more review.

Vice Chairman Rice called for second or third time speakers. Seeing no one rise, he closed the public hearing.

DISCUSSION & DECISION OF THE BOARD

Mr. Taintor stated this was a lot to cover and there has been a lot of concern that they are moving too quickly. One option would be to schedule another special meeting and he has five potential dates. Or they can move ahead and take action to recommend to the City Council to either recommend the ordinances as proposed or to make amendments to the ordinances.

Ms. Moreau made a motion to recommend that the Zoning Ordinance be amended by inserting a new Article 5A – Character Districts, as set forth in the draft ordinance consisting of proposed ordinance text (dated October 4, 2013), with any amendments as determined by the Planning Board. Councilor Novelline Clayburgh seconded the motion.

Ms. Moreau felt there has been a lot of discussion about the upper floor heights and she is not in favor of having a maximum building height but she would be in favor of setting a maximum height for floor heights.

Deputy City Manager Allen was almost leaning closer to having another meeting. He has seen how this has developed over the past several months and the first time he read the written portion of this he was having trouble understanding it. It has improved immensely in clarity and understanding for a lay zoning person. He doesn't think they could be more specific than the graphics and requirements that are included so he is a 180% from some comments he heard tonight. He thinks they are really close to what he would be willing to support, however, because it is going to the City Council on the 18th, he thinks there are a few outstanding issues, including the building height, and he believes limiting the floor heights would be the way to go, but he would like to hear from their consultant on other communities where this has been done. He would like to hear other discussion from other Board members.

Mr. Gladhill stated he was very nervous about a straight height limit. Sitting on the HDC, they are constantly battling straight roof lines and he was concerned that developers will all build to the same height. There must be a way to do this to achieve some roof variations. Also, regarding comments that this was being rushed, if they were to postpone voting tonight, he asked what the next step would be.

Mr. Taintor felt there were two different ways to deal with it. They could postpone to a date before City Council's first reading on November 18th and plan to have a recommendation to the City Council then. In the interim, they could have the Planning staff address some of the questions and concerns that were raised and provide them with more information. That would enable the City Council to meet their deadline. The Planning Board has been asked to come up with a schedule so the City Council can act on this before the end of the year. Otherwise it would start over with first reading with the new City Council. There is also no guarantee that this would be adopted by the City Council.

Councilor Novelline Clayburgh felt it would be worth having a discussion right now about building height to come to a resolution as several people have mentioned this and it also came up at the City Council meeting.

Deputy City Manager Allen asked Mr. Cracknell to come up and discuss that.

Mr. Cracknell suggested that they put a maximum upper floor height of 11' to allow some variability to allow the upper floor to be between 9' – 11'. That would give certainty of what the aggregate of what the building height would be on the six different maps. He also thought it was worth putting forth an amendment to add an additional building form standard with the graphic for the maximum footprint of a building.

Mr. Rice felt they were veering off course as the public hearing was closed and a motion was on the table.

Ms. Moreau asked what the rationale was for the 9' minimum. Mr. Cracknell indicated that a lot of upper floors would be tight at 8'.

Vice Chairman Rice stated that the procedure would be either give time for the Planning Department to incorporate some of tonight's discussion and come back to them at another time so they could either withdraw or amend the motion.

Mr. Leduc asked if they decided to have an additional meeting, the intent would be to discuss height limit and other options they have heard tonight. Vice Chairman Rice confirmed that they would review

the Planning Department’s recommendations based on the discussion tonight and then possibly vote on the proposal.

Councilor Novelline Clayburgh asked if they should elaborate on other issues mentioned tonight.

Mr. Leduc mentioned a report on other areas that have used FBZ.

Deputy City Manager Allen mentioned the text portion that was confusing and the square footage footprint.

Ms. Moreau withdrew her motion. Councilor Novelline Clayburgh with drew her second.

Councilor Novelline Clayburgh made a motion to postpone this matter to October 31, 2013 at 7:00 pm. Deputy City Manager Allen seconded the motion.

The motion to postpone to October 31, 2013 passed unanimously.

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III. PLANNING DIRECTOR’S REPORT – no report.

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IV. ADJOURNMENT

A motion to adjourn at 9:20 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on March 20, 2014.